



U.S. Department of Justice

Immigration and Naturalization Service

**EA**

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

FILE: [REDACTED]

Office: NEW YORK

Date:

**JAN 14 2003**

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 341(a) of  
the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

Self-represented

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 16, 1998, in France. The applicant's father, [REDACTED], was born in Tunisia in September 1961 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in June 1963 in the United States. The applicant claims that she acquired United States citizenship at birth through her grandfather, [REDACTED]

The district director denied the application for lack of prosecution pursuant to 8 C.F.R. section 103.2(b)(13) after failing to receive requested documentation.

On appeal, the applicant's mother states that she never received the Form N-14 dated June 28, 2001. She further states that her father, the applicant's grandfather, lived in the United States all his life.

There is evidence in the file that at least some of the correspondence to the applicant was sent to an incorrect address in France. Therefore, the Associate Commissioner will accept the mother's assertion that she never received the last request for documents and will consider the case still open.

In his denial the director incorrectly determined that the applicant was applying for a certificate of citizenship under Section 301 of the Act.

Section 301, effective for persons born on or after November 14, 1986 of the Act, provides in part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age 14 years...

The applicant never claimed eligibility through her U.S. citizen mother, only through her U.S. citizen grandfather. This type of claim should be adjudicated under section 322 of the Act.

Section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001, and provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was 23 months old on February 27, 2001.

Section 322 of the Act in effect on February 27, 2001, provides that:

(a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent-

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after the age of fourteen years.

(3) The child is under the age of 18 years.

(4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Sufficient documentation has been provided to determine that the applicant's grandfather has resided in the U.S. for a period of

not less than five years. A summary of statement of earnings from the Social Security Administration shows that he met the minimum requirement of 35 quarters necessary for receipt of benefits. This indicates that he was present in the U.S. for at least eight years between 1937 and 1980. In addition, a letter from Nazareth Towers in Columbus, Ohio states that he lived there from June 1, 1987 to the date of the letter, August 25, 1998.

However, there is no evidence in the record that the applicant has met the fourth requirement of section 322 of the Act, namely that she is temporarily present in the U.S. pursuant to a lawful admission. This condition must be met prior to the applicant's 18th birthday. Once this condition is met, the applicant may reapply for a certificate of citizenship.

The applicant has failed to establish her eligibility in this matter because she has not met all the requirements for a certificate of citizenship under Section 322 of the Act. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.